

# HPM&B

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February 6, 2015

**VIA ECF**

Hon. Ronnie Abrams  
United States District Judge  
United States District Court  
Southern District of New York  
40 Foley Square, Room 2203  
New York, New York 10007

Re: Charles Tonge v. Corizon and The City of New York  
Docket No.: 14-CV-3954  
Our File No.: 611-3229

Dear Judge Abrams:

This office represents defendants Corizon Health Services, Inc., sued herein as "Corizon", and the City of New York in the above referenced matter. During the January 30, 2015 telephone conference, *pro se* plaintiff Charles Tonge advised the Court and defendants that he is not seeking monetary damages in this action. Rather, he is only seeking medical care related to an allegedly ongoing leg condition. In the course of that call, your Honor directed the undersigned to look into the issue and to write the instant letter to the Court setting forth the position of Corizon and the City of New York as to the proper avenue for Mr. Tonge to seek medical care.

As a preliminary matter, as counsel for Corizon and the City of New York, we cannot provide legal or medical advice to Mr. Tonge. Additionally, as I advised your Honor during the telephone conference, plaintiff is not currently in the custody of the defendants. Upon information and belief, he has been in the custody of the New York State Department of Corrections and Community Supervision since March 31, 2014. We therefore have no knowledge of his medical course since that time. Further, because we have not been provided a duly executed HIPAA compliant authorization, we have not had the opportunity to review the complete record of Mr. Tonge's medical treatment while in the custody of the City.

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**HEIDELL, PITTONI, MURPHY & BACH, LLP**

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Accordingly, we cannot speak to Mr. Tonge's past or current medical condition, the treatment he has received, or the treatment he needs. With those reservations, this letter is submitted in a good faith effort to satisfy your Honor's request to assist in determining an appropriate course forward.

To that end, it is the position of defendants that, if Mr. Tonge is not satisfied with the care he is has received in at his state correctional facility, he is likely best served by pursuing the recourse available to him under the New York Inmate Grievance Program ("IGP"). It is our understanding that, pursuant to New York Codes, Rules and Regulations, as well as directives of the Department of Correctional Services, all New York State Correctional Facilities have an inmate grievance procedure governed by the IGP. Accordingly, while we cannot say what the grievance process entails at Mr. Tonge's current facility, it is our belief that a process exists which is designed to resolve inmate grievances.

Moreover, pursuant to the Prison Litigation Reform Act, an inmate must exhaust all of the available grievance procedures before he is permitted to bring suit in federal court under 42 U.S. C. 1983. Thus, as to your Honor's questions regarding whether Mr. Tonge should amend his complaint to add additional defendants or file a new action, we would advise the Court that Mr. Tonge is required to pursue the avenues available to him under the IGP before bringing a new action.

As your Honor is aware, there is currently a motion pending on behalf of Corizon and the City of New York to dismiss plaintiff's complaint for failure to state a claim upon which relief can be granted. Respectfully, defendants request leave to supplement the pending motion in light of plaintiff's statements on the record that he is not seeking any monetary damages from the defendants and is seeking only to receive certain medical care. In other words, he is seeking relief which cannot be granted as against the named defendants. We respectfully request (14) days from the lifting of the current stay to supplement the motion.

Should your Honor require any additional information, defendants are happy to provide same.

Respectfully submitted,



J.C. O'Brien (JO 1397)

JCOB:vm

CC: **United States Postal Service**  
**Receipt No.: EV 046855743 US**

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